

Strategy Research Project

COMMAND, CONTROL, COORDINATION, AND COOPERATION DURING DEFENSE SUPPORT TO CIVIL AUTHORITY OPERATIONS

BY

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USAWC STRATEGY RESEARCH PROJECT

**COMMAND, CONTROL, COORDINATION, AND COOPERATION DURING DEFENSE
SUPPORT TO CIVIL AUTHORITY OPERATIONS**

by

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ABSTRACT

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Hurricane Katrina response operations revealed that command, control, coordination, and cooperation (C4) between Title 10 and Title 32 forces needed improvement. The lack of effective C4 between Title 10 and Title 32 resulted in duplicate effort and less than optimal use of critical resources. Through the use of the Emergency Management Assistance Compact (EMAC), more than 456,000 National Guard soldiers, airmen, and their equipment from all states are available to support emergency operations. However, large scale and sustained operations that would be required in the response to an Incidence of National Significance (INS) or catastrophic event require a more systematic approach. This paper will define an appropriate C4 relationship between, USNORTHCOM, The National Guard Bureau (NGB), and The States Governors/State Adjutants General in time of INC or Catastrophic event.

COMMAND, CONTROL, COORDINATION, AND COOPERATION DURING DEFENSE SUPPORT TO CIVIL AUTHORITY OPERATIONS

Hurricane Katrina was the most devastating Natural Disaster on record in the United States; eclipsing such events as the Chicago Fire of 1871, the San Francisco Earthquake and Fire of 1906, and Hurricane Andrew in 1992. The response to Hurricane Katrina was unprecedented. Responders included all levels of government, private business, faith-based and charitable organizations, foreign governments, and individual citizens.¹ The National Guard responded to the Hurricane by deploying 50,087 soldiers and airmen to the region. The Department of Defense responded by sending approximately 18,000 active duty personnel from the Army, Navy, Air force, Marines and Coast Guard. Although the combined military effort undoubtedly saved countless lives and greatly eased suffering in the weeks after the event, many after action reports criticized the military (Active duty and National Guard) for its apparent lack of coordination.

The active duty military and the National Guard share many traits: unmatched material assets, experienced and dedicated leaders, and highly trained personnel possessing courage and devotion to duty. Yet during Katrina, the active duty military and the National Guard seemed to be – to paraphrase Churchill's famous quip about England and America – two forces separated by a common mission. Katrina revealed a split between Northern Command, the combatant command focused on homeland security created by the Department of Defense after 9/11, and the National Guard, which is under the command of its State's governor. The very institution that Americans look to as the model for a unified chain of command revealed itself to have fallen short in that regard. Better coordination between the active duty forces and the National Guard must be ensured before the next disaster strikes.²

It is imperative that our public agencies leverage all of their assets to the greatest extent possible when responding to an Incident of National Significance. The Department of Defense and the National Guard must have a Command, Control, Coordination, and Cooperation (C4) relationship established that maximizes the effectiveness of these forces before the next catastrophic event. Before considering what the appropriate relationship should be, it is important to first review the relevant laws, policies, and compacts currently in place, as well as reviewing the structure of affected agencies; primarily the Department of Homeland Defense, United States northern Command (USNORTHCOM), and the National Guard.

Disaster response in America has traditionally been handled at the lowest level of government that was able to respond. Limits on the role of the federal government are deeply rooted in American tradition and the United States system of Federalism. Following these principles, the Founders created the Federal government to do those things that States cannot

or should not do individually, such as defending the Nation, conducting foreign relations, and ensuring open and free interstate commerce.³ Executive Order 10427 issued by President Truman in 1952 emphasized that federal disaster assistance was for the purpose of assisting state and local government as opposed to supplanting their resources or control.⁴ The primary legislation for providing Federal aid in a disaster is the Robert T. Stafford Disaster Relief and Emergency Assistance Act known also simply as the Stafford Act. The Stafford Act (An amended version of the Disaster Relief Act of 1974 (Public Law 93-288)) established a process by which State Governors can request assistance from the Federal government when the governors have determined that the state can no longer provide an adequate response based on state and local resources. The Stafford Act also created the current system by which a Presidential Disaster Declaration of an emergency triggers financial and physical assistance through the Federal Emergency Management Agency (FEMA). The Act gives FEMA the responsibility for coordinating government wide relief efforts.⁵ The Federal Response Plan it implements includes the contributions of 28 federal agencies and non governmental organizations, such as the American Red Cross.

The disaster response structure has changed greatly since the terrorist attacks on September 11, 2001. In July 2002, the president issued the National Security Strategy of the United States. The new plan placed an emphasis on the development of a national system for incident management and the integration of separate Federal response plans into a single, incident management plan.⁶ President Bush signed the Homeland Security Act into law on 25 November 2002⁷ and on 1 March 2003 the Department of Homeland Security assumed operational control of the nearly 180,000 federal employees from 22 offices and agencies to comprise the new Department.⁸ In February, 17 months after the September 11th attacks, President Bush issued Homeland Security Presidential Directive 5 (HSPD-5). HSPD-5 established both the National Incident Management System (NIMS) as well as the National Response Plan (NRP).⁹

NIMS established a protocol or Standard Operating Procedure (SOP) for responders at the local, state and federal levels. The core of the NIMS process is the Incident Command System (ICS). The ICS includes five major functional areas; Command, planning, operations, logistics, and finance/administration.¹⁰ The NRP is an all hazards plan that establishes a framework for managing Incidents of National Significance (INS) across all of the levels of government. The NRP is built on the premise that incidents should be handled at the lowest possible level of jurisdiction.¹¹

The Posse Comitatus Act generally prohibits Federal military personnel and units of the United States National Guard in a Title 10 status from acting in a law enforcement capacity within the United States, except where expressly authorized by the Constitution or Congress. This Act does not apply to National Guard units or members when serving in a Title 32 status under the control of the States Governor. The Posse Comitatus Act and the Insurrection Act substantially limit the powers of the Federal government to use the military for law enforcement. The Act in its entirety reads as follows:

Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined under this Title or imprisoned not more than two years, or both.¹²

In a report by the Congressional Research Service it was opined that that the actions of armed U.S. forces patrolling the streets in the aftermath of hurricane Katrina was a violation of the Posse Comitatus Act.¹³ The Insurrection Act of 1807 is an exception to the Posse Comitatus Act. It delegates authority to the president to call forth the military to suppress an insurrection or civil disturbance and does not require the request or the permission of the State Governor. Under the act the president must first issue a proclamation ordering the insurgents to disperse. If the situation is not resolved, the president may issue an Executive Order to send in troops as President George H.W. Bush did on May 1st, 1992 when he issued Executive Order 12804 to provide for the restoration of Law and Order in the City and County of Los Angeles in response to the 2002 Los Angeles riots.¹⁴

The passage of the 2007 Defense Authorization bill modified the Insurrection Act. Section 1076 of the new law changes Sec. 333 of the Insurrection Act, which widens the President's ability to deploy troops within the United States to enforce the laws. Under this act, the President may also deploy troops as a police force during a natural disaster, epidemic, serious public health emergency, terrorist attack, or other condition, when the President determines that the authorities of the state are incapable of maintaining public order. The bill also modified Sec. 334 of the Insurrection Act, giving the President authority to order the dispersal of either insurgents or those obstructing the enforcement of the laws. The new law changed the name of the chapter from "Insurrection" to "Enforcement of the Laws to Restore Public Order."¹⁵ Critics of the change have stated that the amendment will make it easier for the President to declare martial law and to activate National Guard members in a federal status without the consent of the state Governors.¹⁶ Figure 1, on the following page, is a flowchart illustrating the differences in the application of the insurrection act as the result of the amendments to Section 333 as a result of the passage of the 2007 Defense Authorization Act.

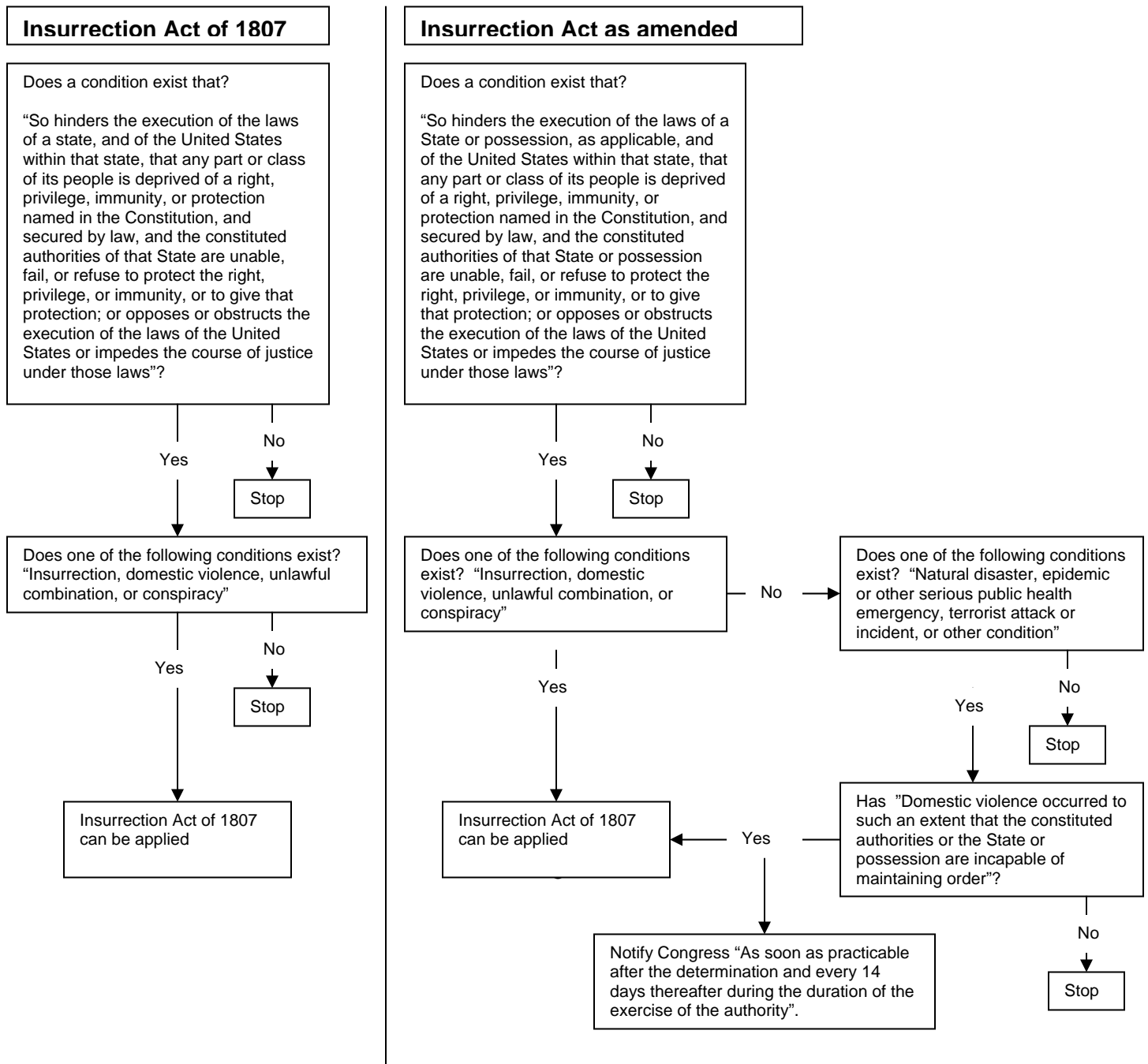


Figure 1¹⁷

As depicted in Figure 1, following the previous rules of the Insurrection Act, if there was not a clear case of insurrection, domestic violence, or conspiracy, the President did not have adequate justification to declare an insurrection and would not be able to use federalized troops to perform policing type operations. Under the 2007 Defense Appropriations Bill Amendment, additional conditions have been added to allow federal troops to perform law enforcement type operations. These additional conditions include natural disaster, epidemic, serious public health

emergency, terrorist attack, or other condition, when the President determines that the authorities of the state are incapable of maintaining public order.

The National Guard has the unique ability to operate in three different duty statuses; State Active Duty, Title 32 Active Duty, and Title 10 Active Duty. It is important to make a distinction of these different statuses because of the funding implications and most importantly, legal authority, as well as command and control. When in a State Active Duty status the member are under the command and control (C2) of the Governor as the Commander in Chief and are being paid directly by the state with state funds. The Posse Comitatus Act is not applicable in this status. Under Title 32 Active Duty orders the members are again under the C2 of the Governor, however, they are being funded by the federal government. The Posse Comitatus Act is still not applicable as the members are working directly under the command and control of the State Governor. The final duty status is Title 10 Active Duty. In this case the National Guard members are working under the Command and Control of the President of the United States as the Commander in Chief and the Posse Comitatus Act would limit some operations of the members in this status to include policing operations, unless the President invoked the amended Insurrection Act, now called "Enforcement of Laws to Restore Public Order".

The Emergency Management Assistance Compact (EMAC) is a national Governor's interstate mutual aid compact that facilitates the sharing of resources, personnel and equipment across state lines during times of disaster and emergency. EMAC is formalized into law by member parties. Through the EMAC, over 50,000 National Guard members responded to hurricane Katrina from all states, territories and the District of Columbia. The EMAC enables states to request the aid of National Guard service members from other states while keeping them in a Title 32 status. This is an important tool when considering that an INS could overwhelm the resources available to just one National Guard Joint Force Headquarters depending on their current levels of manpower and equipment available at the time of the incident. The role of the Joint Force Headquarters will be discussed later in the paper.

The United States Northern Command (USNORTHCOM) was established in April of 2002 and its roles and establishment is described in the 2002 National Strategy for Homeland Security.

In April 2002, President Bush approved a revision of the Unified Command Plan that included the establishing a new unified combatant command, U.S. Northern Command. This command will be responsible for homeland defense and for assisting civil authorities in accordance with U.S. law. As in the case with all other combatant commanders, the commander of Northern Command will take all operational orders from and is responsible to the President through the Secretary of Defense. The commander of Northern Command will update plans

to provide military support to domestic civil authorities in response to natural and man-made disasters and during national emergencies.¹⁸

The USNORTHCOM commander has no command authority of National Guard forces to include planning and operations unless these forces are in a Title 10 status and assigned to USNORTHCOM.

The National Guard Bureau does not have a Command and Control (C2) relationship over units in the Army and Air National Guard; rather the Governor of each state and the territory of Guam, the Commonwealth of Puerto Rico, and the Virgin Islands is the Commander in Chief of all units not in Federal active service. Command is normally exercised by an adjutant general or other designated military official. The President of the United States is the Commander in Chief of the National Guard of the District of Columbia.¹⁹ The mission of the National Guard Bureau is to participate on the Army and Air Force staffs in the formulation of programs and plans that pertain to or effect National Guard units, develop and administer operating programs that are required for the operation the National Guard based on guidance from the Departments of the Army and Air Force, and to assist the states in the organization, maintenance, and operation of their National Guard units so as to provide trained and equipped units.²⁰

National Guard units and members are ultimately under the command and control of the Governor when serving in a Title 32 role. Each state, territory and the District of Columbia have established a Joint Force Headquarters (JFHQ) to provide Command and Control (C2) to the subordinate units in that particular state, territory or district. The JFHQ has the ability to act as a Joint Service Headquarters for National-level response efforts during an Incident of National Significance (INS).²¹ The JFHQ is able to assume tactical Command and Control of all military units ordered to respond any domestic contingency operation. The State JFHQ also has the responsibility and ability to provide situation awareness as well as a Common Operation Picture to national level headquarters, (NGB, DoD, and DHS) during contingency operations and provide joint reception, staging, onward movement, and integration (RSOI) of all inbound forces.²² These inbound forces may include National Guard service members from other states responding through the EMAC process or federal service members responding under a Presidential directive.

When National Guard Forces are deployed in response to requests from civil authorities, the JFHQ may establish a National Guard Joint State Task Force (JTF-State) in order to provide command and control of those forces. The mission of the JTF-State is primarily to provide C2 of those deployed units but is also to facilitate the flow of information between the JFHQ and the domestically deployed units. The JTF-State commander may, with the consent of both the

Governor and President of the United States, be called into service under Title 10 and continue service under Title 32 so that the commander may command both deployed Active Duty (Title 10) personnel and National Guard (Title 32) personnel.²³ This arrangement facilitates unity of effort and unity of command for military personnel at the incident site. In addition it provides a single Point of Contact (POC) for civil authorities.

In addition to the National Guard units, the JFHQ and the JTF-State, each state has four enhanced capabilities as well as two regionalized assets. The organic capabilities include the National Guard Civil Support Team, the National Guard Counter Drug Program, the National Guard Reaction Force, and the Joint Continental United States Communications Support Environment. The two regionalized assets are the Chemical, Biological, Radiological/Nuclear, and Explosive (CBRNE) – Enhanced Response Force Package (CERFP), and the Critical Infrastructure Protection-Mission Assurance Assessment teams.

The National Guard Civil Support Team or CST consists of 22 full-time National Guard personnel who are highly trained and have been validated in their particular area of expertise. The mission of the CST is to assess a suspected Weapons of Mass Destruction (WMD) attack, advise civil responders and facilitate the incorporation of follow-on state and federal military forces. In addition to the trained and validated personnel the CST teams come with a complement of equipment including: a Mobile Unified Command Suite vehicle which provides a broad range of communications capabilities, a Mobile Analytical Laboratory System van that contains a full suite of analytical instruments to enable the team to identify potential WMD use and recommend appropriate actions in the area. Currently each state, territory, and the District of Columbia have a CST. California has two. The CST units are on standby 24 hours a day and have the requirement to deploy initial response elements within 90 minutes of notification. The National Guard CST units have provided supported civil authorities in every major event since their inception in 1999, including Hurricane Katrina.²⁴

The National Guard Counter Drug Program (NGCD) operations are conducted under the command and control of the Governor and not in a federal military status. The statutory authority for the program is found under section 112, Title 32 of the United States Code. In addition to the primary role drug interdiction and counter drug activities, National Guard members involved in this operation are in daily contact with civil authorities to include law enforcement officers from the city, county and state level. This greatly enhances the interoperability between the civil agencies and the National Guard as well as providing a foundation for operational relationships.²⁵

The National Guard Reaction Force (NGRF) is comprised of a 50-75 soldier team that is able to respond to incident with-in the state with-in four hours and a follow-on force of 400 personnel that is able to respond with-in 24 hours. The missions of the NGRF are primarily providing site security, providing presence patrols and shows of force, establishing roadblocks, checkpoints or both, controlling civil disturbances, and protecting select critical infrastructure. These teams are state assets serving in a Title 32 status falling under the control of the State Adjutant General.²⁶ The makeup of these teams will vary between states depending on the types of units assigned to the state and the type of unit assigned to the mission at a particular time.

The Joint CONUS Communications Support Environment (JCCSE) directly supports the National Guard Soldiers and Airmen engaged in Homeland Security missions by providing interoperable and integrated information technologies throughout the 54 states, territories and District of Columbia. JCCSE also supports the net-centric Information Technologies required to support USNORTHCOM, USPACOM, USSTRATCOM, and other Homeland Defense and Defense Support to Civil Authorities (DSCA). This enables communication, information sharing, and information flow from the incident site through to the national level and can provide a common operating picture to responding entities and C2 nodes at all levels.²⁷

In addition to the four organic assets listed above, the National Guard has the ability to call on two regional assets; the Chemical, Biological, Radiological/Nuclear, and Explosive (CBRNE) – Enhanced Response Force Package (CERFP), and the Critical Infrastructure Protection-Mission Assurance Assessment teams. The mission of the CERFP is to provide the State Governor with the capabilities to conduct incident site searches, rescuing casualties, decontamination of casualties, and performing medical triage and stabilization for transport to a medical facility. 17 teams have been authorized and of these, 12 are currently validated as fully mission capable.²⁸ There is at least one CERFP unit assigned to every FEMA region. These teams are pulled from existing units in the state and serve in a Title 32 status as traditional guardsmen.

The mission of the National Guard Critical Infrastructure Protection-Mission Assurance Assessment teams (CIP-MAA) is to conduct all-hazard risk assessments on prioritized federal and state critical infrastructure. There are currently six fielded teams that provide coverage on six FEMA regions. Changes to Title 32 USC have allowed an enhanced role for the National Guard in assessing and protecting critical infrastructure. That, combined with the Guard's unique role as a member of the community has provided an invaluable relationship with commercial and private sector entities.²⁹

The fielding of these specialized teams in all 54 States, territories, and the District of Columbia give the National Guard a unique opportunity to work and train side by side with first responders, civil authorities and law enforcement professionals. These habitual relationships foster trust and greatly enhance interoperability. In addition to these specialized National Guard teams, the National Guard has provided command and control at several key events since September 11, 2001. These events have included the 2004 Democratic and Republican National Convention, the Group of Eight economic summit in Georgia and Operation Winter Freeze.

The Group of Eight economic summit, or G8 Summit as it is commonly referred to brings together the world's major industrial democracies and includes Canada, France, Germany, Italy, Japan, Russia, the United Kingdom, and the United States. The event plays host to world leaders and is a very high profile event. These facts alone required a very robust security and response effort. However, during the 2004 G8 summit in Georgia, the stakes and the threat level were elevated. The FBI and, then, Attorney General John Ashcroft had reported that credible intelligence from multiple sources indicated a planned al Qaeda attack on U.S. soil in same general time period.³⁰ The 2004 G8 Summit would mark the first time that a National Guard Officer in Title 32 status would have command and control responsibilities for both Title 32 National Guard soldiers and airmen as well as Title 10 active duty personnel. With the approval of President George Bush and Georgia Governor Sonny Perdue, Brig. Gen. Terry Nesbitt of the Georgia National Guard assumed command of Army and Air National Guard personnel on State Active Duty Status as well as active duty Soldiers, sailors, airmen and marines. The express purpose of assigning one commander over both types of forces was unity of command. Brig. Gen. Nesbitt explained that this command structure was being looked at "as a model for future homeland defense and homeland security operations so that same unity of command can be put in place to support other homeland security operations or other special events."³¹ In addition to the G8 Summit, two other relatively short duration events deemed also as National Special Security Events highlighted active duty and National Guard personnel under the command and control of a Title 32 Officer. These were the 2004 Democratic National Convention in Boston and the Republican National Convention in New York. A much longer duration operation, Operation Winter Freeze, was also conducted with a similar command structure in 2005.

Operation Winter Freeze provided another opportunity for a Title 32 Guardsman to command both Title 32 status National Guard members as well as Title 10 Active duty personnel. Operation Winter Freeze provided military support to the U.S. customs and Border

Protection's Border Patrol to help prevent illegal aliens from entering this country along a 295-mile stretch of the U.S. – Canadian border. The three month mission included military personnel from the National Guard, and U.S. Northern Command's Joint Task Force North as well as civil authorities. Brig. Gen. Thomas Shailor of the Vermont National Guard commanded the operation. He stated that "by combining the command and control structures of the active and guard organizations involved in the operation, the taxpayers reaped a savings of more than \$8 million."³² While the previous operations, the G8 summit and the two National Conventions, were several day events, Operation Winter Freeze was a three month operation and demonstrated that the C2 relationship was viable for more than just a multi-day event.

The Emergency Management Assistance Compact (EMAC) is a national Governor's interstate mutual aid compact that facilitates the sharing of resources, personnel and equipment across state lines during times of disaster and emergency. EMAC is formalized into law by member parties. Through the EMAC, over 43,000 National Guard members responded to hurricane Katrina from all states, territories and the District of Columbia. The Emergency Management Assistance Compact (EMAC), established in 1996, was ratified by Congress and signed into law, in 1996, (Public Law 104-321), 50 states, the District of Columbia, Puerto Rico and the US Virgin Islands have enacted legislation to become members of EMAC. Although the EMAC provides a responsive framework for Governor's to provide assistance to other states including National Guard Personnel, it does not address the incorporation of federal military support and the requirements of unity of effort or unity of command needed when both Title 32 and Title 10 forces are performing operations in support of the same incident.

The devastation wrought by hurricane Katrina was unprecedented in U.S. history. Because of the scope and magnitude of the event, flaws in the abilities of responders at the local, state and national level were apparent and widely publicized. This publicity and consequential public outcry pushed agencies and the Congress to evaluate what went wrong in the Katrina response as well as looking at how successful operations could be conducted in the future. The Federal Response to Hurricane Katrina – Lessons learned, provided ten specific recommendations to the Department of Defense to improve response operations. The Senate Report 'Hurricane Katrina: A Nation Still Unprepared' did not offer any specific recommendations to the Department of Defense or the National Guard but did criticize the lack of coordination between the National Guard and USNORTHCOM. The Army National Guard provided testimony to the Senate in the form of an After Action Review.

The White House document entitled the Federal Response to Hurricane Katrina: Lessons Learned, provided 10 specific recommendations for an improved military response to a future Incident of National Significance (INS). Three of the recommendations specifically addressed the National Guard. The first was that DOD should fully resource the JTF State Headquarters to address capability gaps resulting from legacy equipment and to enhance readiness by funding full-time personnel requirements. JFHQ-State transformation is key to rapid deployment of National Guard forces in response to a catastrophe.³³ The report goes on to recommend that the JFHQ-State transform to ensure response availability in each region. Further the report recommends that the JFHQ State will provide the command structure in which to lead and direct arriving Federal response capabilities, forming the backbone of State Incident Command System (ICS) and, as a result, the Federal Joint Field Office (JFO). It will facilitate unity of effort and provide the situational awareness needed for an effective response. To that end, the Command, Control, Communications, and Information (C3I) structure must be interoperable and satisfy a common set of mission essential tasks.³⁴ Finally and perhaps most significantly, the report recommends that the capability to rapidly activate a JTF-State for contingencies, JTF-State be a forward deployed command group that can stage assets (by conducting reception, staging, onward movement, and integration); provide situational awareness and initial command and control for both State governors (for National Guard troops) and USNORTHCOM (for Federal active duty troops); and provide State level components to a Federal active duty JTF, should one be required. A JTF-State model streamlines the command structure exercising command and control over all assigned forces supporting civil authorities. The JTF-State command and control architecture should provide a wide network to build a single common operating picture that increases situational awareness and reduces redundancy. The JTF-State should assume command and control of Federal active duty forces and National Guard forces from other States. As part of the JFHQ State, the JTF-State maintains and provides trained and equipped forces and capabilities. The JTF-State must conduct rehearsals and exercises in this capacity. Provisions should be provided to augment the JTF-State with staff from local National Guard brigade and division headquarters as well as staff from USNORTHCOM under Title 32 C2. If and when necessary, this JTF-State model enables a National Guard Commander familiar with State and local area of operations to serve both in a Federal and State status providing both unity of effort and unity of command for Federal and State forces.³⁵

The Army National Guard provided testimony to the Committee on Homeland Security and Governmental Affairs in the form of an After Action Review (AAR). The AAR noted that lines of Command, Control and Communications lacked clear definition and coordination among

the Title 10 and Title 32 forces. The lack of effective coordination resulted in duplicate efforts as well as less than optimal use of critical resources.

In order to respond to future Incidents of National Significance (INS) it is imperative that Command, Control, Coordination, and Communication (C4) roles are clearly defined for Title 10 and Title 32 response forces. Waiting until an event occurs to develop an incident specific or ad hoc relationship will lead to delays in responsiveness, potential duplication of effort and most importantly will not allow for the (C4) relationships to be exercised and rehearsed prior to an actual INS.

Three readily apparent options exist for military planners to consider. The first option is to leave the relationship as it is traditionally been executed for civil support operations such as during Hurricane Katrina. In this parallel command structure, Title 10 forces report to a Title 10 commander and Title 32 forces report to a Title 32 commander. The second option would be to activate National Guard forces under Title 10 and place all participating forces under the command of a Title 10 commander. The third option is to establish a "Dual status" National Guard Commander who has command authority over both Title 10 and Title 32 forces.

The parallel command structure has several advantages. It has been the standard model for civil support operations and is the model practiced most often. It preserves the authority of both the State Governor and the President. The major disadvantage is that it does not ensure unity of effort. During Hurricane Katrina this was most evident.

Activating all National Guard forces under Title 10 has the advantage of ensuring unity of effort. This option appears to be less cumbersome to employ given the changes to the section 333 of the Insurrection Act facilitated by the 2007 Defense Authorization Act. Three distinct disadvantages are associated with this option. First and foremost it is anticipated that most Governors would balk at what could be considered as usurping their sovereign State powers. Second, while serving in a Title 10 status, National Guard forces would be constrained by the same rules governing active duty forces when involved in any law enforcement activities. Finally, it would be unlikely that the Active Duty commander would have formed relationships with local responders, law enforcement officials and the civil authorities.

The Final option would be to establish a Dual Status Commander. Title 32 U.S.C. Section 325 allows a National Guard unit commanding officer to be in federal service without giving up his state National Guard Status. This command structure has the advantage of providing unity of command, and unity of effort. The National Guard Commander will likely be familiar with local first responders, civil authorities, and local government agencies and their emergency management procedures.

In many states the Adjutant General is already the agency director responsible for the States Department of Homeland Security and or the State office of Emergency Management. This command relationship should be acceptable to most Governors and local political figures as it preserves the states sovereignty and capitalizes on well established working relationships. There is some criticism to this dual status command structure. The most evident and perhaps the most common criticism is that the dual status commander would be reporting to both the President and the State Governor. There is concern that conflicting guidance from these two authorities would be extremely difficult to rectify and could place the dual status commander in an untenable position. This concern seems unfounded. If the President has not invoked the "Enforcement of Laws to Restore Public Order" Act, the C2 rests entirely with the State Governor. If, however, the President does invoke the amended Insurrection Act, the President has assumed Federal control of the INS and in a situation such as this, the Dual status commander would report to the President.

Experts agree that it is a matter of when, not if, the United States is struck with another major disaster. It is clear that another event, whether natural or man-made, with the same magnitude of effect and impact as Hurricane Katrina will require a more effective and efficient response from our military. The public demands and has a right to expect the most effective and rapid response possible. It is imperative that the extraordinary capabilities of the military be well coordinated. When the next disaster strikes the most important decisions to be made should be what forces are needed to respond, not what will the command and control structure look like and how will it work. After reviewing and considering the applicable organizations, laws, policies, and AAR's, it is recommended that a Dual Status National Guard Officer be placed in command and Control of both Title 10 and Title 32 forces when responding to an INS. The magnitude of an event that would require a dual-status commander would be significant and as such, it is recommended that the officer assigned to this position be an O7 or above. This arrangement must be established in advance in each state and territory in order to have the necessary staff work and agreements in place before an incident occurs. Establishing the agreements prior to an incident would allow the most important actions to take place, including participation in exercises, mission rehearsals and most importantly building relationships that will facilitate communication and trust in times of crisis. In addition, these agreements would alleviate potentially time consuming negotiations between the President and the Governor when every minute counts. The selected commander or commanders in each state should participate in USNORTHCOM, DHS, and State level preparedness and response exercises. The commander should also attend EMAC Training at Dual Status JTF Commander Course held at

USNORTHCOM. Providing a commander that has established relationships in the communities and with local, state, and national responders, we ensure unity of effort and unity of command and most importantly, best serve the American people.

Endnotes

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